(1) 11.2252 (03)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C. G.)

SECOND APPEAL NO. 178 /2005.

SINGLE BENCH

APPELLANT
(Plaintiff)

Dayarma S/O late Shri Sajjan Singh Thakur by cast Gond, aged about 65years, resident of Village- Jhuniyapara Kanker, Tah. & District-Kanker (C.G.)

VERSUS

RESPONDENTS
(Defendants)

1. Manohar Ram Netam S/o Shri not known, aged about 55 years. R/o Jhuniyapara, kanker, Tah. & Dist. kanker (C.G.)
2. (A) Smt. Isharawati Devi Sharma Wd/o late Shri Rajeshwar Sharma, aged about 45 years,
   (B) Neeraj Sharma S/o late Shri Rajeshwar Sharma, aged about 25 years.
   (C) Manoj Sharma S/o late shri Rajeshwar Sharma, aged about 23 years.
   (D) Pankaj Sharma S/o late shri Rajeshwar Sharma, aged about 20 years, No. 2A to D resident of village-Jhuniyapara Kanker Tahsil & District-Kanker (C.G.)
3. MangtuRam Dhru S/o shri not known, aged about 50 years resident of Jhuniya para/ P.H.E. Officer (Mechanic), Kanker tahsil & district Kanker (C.G.)
4. Smt. Rajbati Wd/o Phoolsingh Gond, aged about 59 years, resident of Jhuniyapara/ Barkai Post-Sarona, tahsil and district Kanker (C.G.)

P.R. No. 673 dated 29.03.06
Presented by R.S. Bareth

SECOND APPEAL U/S 100 OF CIVIL CODE OF PROCUDURE 1908.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...SA..175/05 **सन् 200**

(36)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SECOND APPEAL NO. 175/2005

Dayaram **Versus** Manohar Ram Tekam and others

Shri R.S. Patel counsel for the appellant.

25.9.2006:

Dhirendra Mishra,J:

The appellant/plaintiff has preferred this second appeal under section 100 of the Code of Civil Procedure against the impugned judgment and decree dated 18.2.2005 passed by the Additional District Judge, Bastar in Civil Appeal No. 31-A/2002 whereby the appeal preferred by the appellant/plaintiff against the judgment and decree dated 31.7.2002 passed by Civil Judge Class II Kanker in Civil Suit No. 01-A/1986 has been dismissed and the judgment and decree passed by the learned Civil Judge dismissing the suit of the plaintiff has been affirmed.

2. Learned counsel for the appellant submits that the suit for possession of the suit house filed by the plaintiff was dismissed by the trial Court by recording a finding that the appellant has failed to prove that he is the owner of the suit house. The application filed by the plaintiff under Order 41 Rule 27 of the CPC was also rejected whereby he had prayed for permission to adduce additional evidence, on the ground that the document sought to be filed at the appellate stage pertains to a certificate issued in the year 1971-72 in which it is mentioned that initially the house

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक SA...175/05 **सन्** **200**

37

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was entered in the name of Dayaram son of Sajjan which was subsequently changed as Dinesh son of Sajjan Thakur on the ground that certificate Ex. P-1 was filed by the appellant before the trial Court and therefore no additional evidence as is sought to be filed, ~~has been~~ can be filed. He further submits that the findings of the appellate Court confirming the judgment and decree of the trial Court are erroneous as the Courts below have failed to consider that the defendants are claiming ownership of the suit house situated over Khasra No. 465/1, though the suit pertains to Khasra No. 460. Courts below have also failed to consider the overall evidence adduced by the plaintiff during trial and as such the findings of the trial Court as also of the appellate Court are contrary to the material available on record and as such perverse. Learned counsel for the appellant submits that the following substantial questions of law arise for adjudication of this appeal.

A) "Whether the learned Court below was justified in not relying the documents exhibited by the plaintiff with regards to the title of the plaintiff?

B) Whether the learned court below has given perverse finding and not considering the application under order 41 Rule 27 of the C.P.C.?"

I have heard learned counsel for the appellant and perused the records including the judgment and decree passed by both the Courts below.

The trial Court after obtaining the case on remand has dismissed the suit of the plaintiff/appellant by recording a finding that the plaintiff has

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.:1.2.5./05 **सन् 200**

(38)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

failed to prove that he is the owner of the suit property bearing Khasra No. 460 area 20 decimal, House No. 94 as he has admitted in his deposition that the house in question situated over the Abadi plot and he does not have the *patta* of the same. The solvency certificate of Ex. P-1 issued by the Municipal committee Kanker pertaining to House No. 94 belonging to Dayaram is assessed for tax of Rs. 2000/- per annum but it does not mention the Khasra number on which house No. 94 is situated and except the above document no other document has been filed by the appellant to show that the suit house is recorded in his name though it is an admitted fact that the land in question is a Government Abadi land and on the contrary the defendant has filed the document being Khasra Panchsala wherein wife of the defendant is shown as a person in possession of the same. He has also filed the document being the electricity bill, water bill etc. with respect to the suit house and on these findings the suit of the plaintiff for possession has been dismissed.

The above findings recorded by the courts below are the findings of fact and they are based on the oral and documentary evidence adduced by the parties which do not require any interference in this appeal. Thus no substantial questions of law as proposed by the counsel for the appellants arise for adjudication of this appeal and the appeal is liable to be dismissed. It is accordingly dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge

P.T.O.

4/10/16